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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970

No. 27

GLADYS BODDIE, et al.,
*Appellants,*

v.

THE STATE OF CONNECTICUT, et al.,
*Appellees.*

On Appeal from the United States District Court
for the District of Connecticut

## APPELLEES BRIEF ON REARGUMENT

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# INDEX

## SUBJECT MATTER

*Page*

Table of Authorities ..... ii

Statement ..... 1

Argument

I. Appellants Are Not Denied Due Process ..... 2

II. Appellants Are Not Denied Equal Protection ..... 4

III. Appellants Claim That The Relief In This Case May Be Of A Limited Nature ..... 7

IV. Addendum To Section I C. Connecticut Is Experimenting With Innovative Concepts As It Develops In Forma Pauperis Procedures ..... 8

Conclusion ..... 9

## TABLE OF AUTHORITIES

*Cases:* *Page*

*Aiello* v. *Commissioner of Welfare*, 260 N.E. 2d 662, (Mass. 1970) ..... 8

*Dandridge* v. *Williams*, 397 U.S. 471 (1970) ..... 5

*Frederick* v. *Schwartz*, 296 F. Supp. 1321, 1322 ..... 9

*Goldberg* v. *Kelly*, 397 U.S. 254 (1970) ..... 8

*Harris* v. *Harris*, 424 F. 2d 806 (1970) ..... 2

*In the Matter of Athen Carlton Garland et al*, ____ F. 2d ____, (1970) ..... 6

*Laprease* v. *Raymours Furniture Company, Inc.*, 70-CV-16 (1970) ..... 3

*Lee* v. *Habib*, 424 F. 2d 891 (1970) ..... 3

*Sniadach* v. *Family Finance Corporation of Bay View et al*, 395 U.S. 337 (1969) ..... 3

*Williams* v. *Illinois*, ____ U.S. ____ (1970) 90 S. Ct. 2018, 38 L.W. 4607 ..... 4

Constitutional Provisions:

Fourth Amendment to the United States Constitution ..... 3, 4

Tenth Amendment to the United States Constitution ..... 9

Fourteenth Amendment to the United States Constitution ..... 3, 4, 6

Statutes:

*Federal*

11 U.S.C. § 68(c)(2) ..... 6

28 U.S.C. § 753, § 1915 ..... 3

28 U.S.C. § 1915a ..... 8

§ 16-904a D. C. Code (1967) (79 Stat. 889) ..... 2

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## APPELLEES BRIEF ON REARGUMENT

## STATEMENT

Appellants' brief on reargument cites several recent cases to support their claim that the plaintiffs are denied equal protection of the laws because of the Connecticut statute requiring entry fees and the auxiliary expenses incident to the institution of a divorce action.

In divorce actions the petitioners are required to pay not only the entry fee but also the expense of service, including publication where necessary. Due to the nature of divorce actions it may also be necessary to provide counsel for both plaintiffs and defendants.

## I.

## APPELLANTS ARE NOT DENIED DUE PROCESS.

*Harris* v. *Harris*, 424 F. 2d 806 (1970) cited by appellants held that divorce actions were within the framework of the statute permitting divorces in certain cases in the District of Columbia. The Court held that the in forma pauperis statute, as well as § 16-904a of the D. C. Code (1967) (79 Stat. 889) set forth the public policy as enacted by Congress to the effect that divorce statutes and the in forma pauperis act, 28 U.S.C., § 1915a, when read together, authorized divorces on statutory grounds.

> ". . . The public policy on any matter is primarily for the lawmakers and is to be ascertained by reference to the Constitution, statutes and court decisions and not from general considerations of supposed public interest. If a policy exists it may be used to resolve an uncertainty of law but it cannot override a statute. Muschany v. United States, 324 U.S. 49, . . ."

On the basis of the probability of the expense of publication costs in the *Parks* case considered by the Court together with the *Harris* case, the Court indicated that since these fees are not fixed by the Court they are not one of the costs covered by the in forma pauperis statute. The Court delayed decision until a record was presented with concrete facts because

> ". . . we do not consider that there is any certainty that this cost will arise or, if it does, what the cost will be, or that funds cannot be found by appellant to pay the reduced cost that would result from our prior suggestion. . . ."

As indicated by the plaintiffs, the *Harris* case decided the issue on statutory grounds.

The same is true in *Lee* v. *Habib*, 424 F. 2d 891 (1970) wherein the plaintiffs requested that the Court order a free transcript for the use of an indigent civil litigant on appeal. The Court held that under certain statutes the United States must pay for transcripts for indigent litigants allowed to appeal in forma pauperis. See 28 U.S.C. § 753, § 1915.

*Lee* was a possessory action in which the defendant obtained a judgment by default. *Lee* interposed certain legal and equitable defenses and the Appellate Court was asked to dismiss for failure to comply with certain procedural requirements. However, the Court at p. 940 said: "We do not hold that every civil case will require a transcript on appeal. We indicate no opinion as to whether one will be required in this case."

In note 59 — "To allow free transcripts for all civil litigants would only serve to foment unnecessary appellate litigation."

Recently the courts have had occasion to strike down certain state statutes as violative of the Fourth Amendment and Fourteenth Amendment. This has been especially true in those situations where an indigent has been subject to prejudgment confiscation of his wages, household property, or has been preemptorily deprived of his housing accommodations or similar situations. In the recent *Sniadach* case, 395 U.S. 337, the Court held that a prejudgment garnishment statute of Wisconsin violates the fundamental principles of due process. Likewise, *Laprease* v. *Raymours Furniture Company, Inc.*, 70-CV-16, decided (7/29/70) in the United States District Court for the Northern District of New York that statutes permitting prejudgment seizure of chattels by a

plaintiff in a replevin action without the prior order of a judge or a court of competent jurisdiction is unconstitutional in that it violates the search and seizure provisions of the Fourth Amendment, and it also violates the procedural due process requirements of the Fourteenth Amendment.

The foregoing cases and other of a like nature recognize the rights secured by the Fourth Amendment (searches and seizures) and the Fourteenth Amendment (deprivation of life, liberty or property, without due process of law).

The essential nature of a divorce is not consistent with the status of a right within the intendment of the Constitution.

## II.

## APPELLANTS ARE NOT DENIED EQUAL PROTECTION.

Contrary to claims of the appellants we submit that *Williams* v. *Illinois*, ____ U.S. ____ (1970) 90 S. Ct. 2018, 38 L.W. 4607, is not relevant to the problem here presented. Williams was convicted of petty theft and received the maximum sentence provided by state law: one year imprisonment and a $500.00 fine. At all times Williams was without funds and his petition to vacate the order requiring he remain in prison upon the expiration of his one year sentence because of non-payment of the fine and court costs was denied. He appealed to this Court. The Court held that

> ". . . the Illinois statute as applied to Williams works an invidious discrimination solely because he is unable to pay the fine. On its face the statute extends to all defendants an apparently equal opportunity for limiting confinement to the statutory maximum simply by satisfying a money judgment. . . ."

However, *Dandridge* v. *Williams*, 397 U.S. 471 (1970) is very relevant. There the Court upheld maximum grant limitations to welfare recipients regardless of the size of the family. The Court held:

". . . If this were a case involving government action claimed to violate the First Amendment guarantee of free speech, a finding of 'overreaching' would be significant and might be crucial. . . . But the concept of 'overreaching' has no place in this case. For here we deal with state regulation in the social and economic field, not affecting freedoms guaranteed by the Bill of Rights, . . .

". . . In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 31 S. Ct. 337, 340, 55 L. Ed. 369. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations — illogical, it may be, and unscientific.' Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69-70, 33 S. Ct. 441, 443, 57 L. Ed. 730. 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' McGowan v. Maryland, 366 U.S. 420, 426, 81 S. Ct. 1101, 1105, 6 L. Ed. 2d 393. . . .

". . . And it is a standard that is true to the principle

that the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of wise economic or social policy. . . .

". . . It is enough that the State's action be rationally based and free from invidious discrimination. The regulation before us meets that test. . . ."

The basic reason for statutes requiring payment of entry fees in civil proceedings is to provide some revenue with which to support the judicial system. It is fair and equitable that some of the costs to support the system should be borne by those who make use of the available facilities. The Connecticut statutory fee of $45.00 for civil actions in the Superior Court is reasonable.

Attention is also called to No. 7476, In the Matter of Athen Carlton Garland et al., Bankrupts, ____ F. 2d ____, decided in the United States Court of Appeals for the First Circuit on July 10, 1970 wherein the Court affirmed the action of a referee in bankruptcy in refusing petitioners a discharge in bankruptcy because of failure to pay the $50.00 filing fees due to indigency. The Court in its opinion stated the fees charged are to be regulated so that the system as a whole will produce sufficient revenue to meet all costs. 11 U.S.C. § 68(c)(2)

". . . A bankruptcy discharge is not a fundamental right. Congress can, and has, concluded that it is desirable under certain circumstances that an individual be able to get clear of his debts and start afresh. It must have the right, however, to attach reasonable conditions to this privilege. . . ."

## III.

## APPELLANTS CLAIM THAT THE RELIEF IN THIS CASE MAY BE OF A LIMITED NATURE.

At page 14 of Appellants' Brief on Reargument, it states "It may be appropriate, then, to note that the relief sought here need not involve unpredictable or far-reaching consequences for future litigation". It is further stated that "This Court, in interpreting the equal protection clause, may properly limit it to matters of fundamental import, such as the right to be heard and to disparities created by the State, not by private litigants. As to other matters, the equal protection standard is either inapplicable or is met by the minimal showing required in *Dandridge* v. *Williams,* supra".

This argument is ambiguous and it is difficult to ascertain the intent of the appellants from the language used. As interpreted by us, the appellants are apparently claiming that divorce is a matter of "fundamental import" and a "guaranteed right" rather than a privilege extended by the Legislature. As stated at page 12 of Appellee's main brief, it was argued that no person has a vested "legal right" to a divorce.

Appellants further claim that indigent applicants for a divorce must be afforded counsel, particularly since the State requires that marriages be dissolved by Court order. Assuming that this be correct, it seems obvious in the event the fee charge is held unconstitutional then this Court must fix the standards or guidelines for the waiver of court entry fees, as well as the payment of the auxiliary expenses. If it is restricted to divorce matters, then in all probability further litigation would result in other areas of civil litigation.

As of this date this Court has not yet stated that the

Constitution requires that counsel be appointed at the expense of the government in any civil case.

*Goldberg* v. *Kelly*, 397 U.S. 254 (1970)
*Aiello* v. *Commissioner of Welfare*, 260 N.E. 2d 662, (Mass. 1970)

The federal statute, 28 U.S.C. § 1915, permits the Court to request an attorney to represent a person proceeding in forma pauperis in civil actions. The Court does not have authority to appoint counsel to represent such a litigant.

## IV.

## ADDENDUM TO SECTION I C. CONNECTICUT IS EXPERIMENTING WITH INNOVATIVE CONCEPTS AS IT DEVELOPS IN FORMA PAUPERIS PROCEDURES.

At page 8 of our main brief, appellees mention the experimentation with new procedures for the purpose of developing in forma pauperis proceedings. The State Welfare Department program previously mentioned is now organized in Connecticut and is financed on the basis of a three-year pilot study designed to evaluate the legal needs for persons on welfare. Connecticut is one of five states which has organized a legal service program in cooperation with the Meriden, Wallingford and Southington Bar Associations. The program is now in its second year and the statistics for legal services rendered for the period from November 3, 1969 to March 31, 1970 indicate that the organization handled 123 legal matters, including 45 divorce actions.

In addition, it is a matter of general knowledge that the New Haven Legal Assistance Association, which is interested in the present action, has also initiated a substantial number of divorce actions in the New Haven area. We

have no direct knowledge as to the source of funds used to pay the entry fees and the other expenses incident to such divorce actions. It is however logical to conclude that such expenses were paid by the plaintiffs themselves or the New Haven Legal Assistance Association, Inc.

See *Frederick* v. *Schwartz*, 296 F. Supp. 1321, 1322 (quoted — p. 9 of main brief)

## CONCLUSION

In a democracy such as ours, legislative changes often consume considerable time to develop into statutory enactments. This process taxes the patience of many of our citizens. The founders of our nation foresaw the problem and in their wisdom enacted the Tenth Amendment.

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."
>
> Ratified December 15, 1791

*Respectfully submitted,*

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## CERTIFICATE OF SERVICE

I, Raymond J. Cannon, attorney for the appellees, certify that on the 29th day of September, 1970, I served a copy of the foregoing Brief on the appellants by mailing air mail, postage prepaid, to the following attorneys of record:

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(PAPERS FILED AFTER REARGUMENT)

Memorandum on behalf of appellants filed on Dec. 3, 1970 (not printed)

Appellants' supplemental brief filed on Dec. 4, 1970 (not printed)

Memorandum submitted by appellees filed on Dec. 4, 1970 (not printed)

State of Georgia's reply to appellants' supplemental brief filed on Dec. 10, 1970 (Not printed)

Memorandum for U.S. as amicus curiae filed on Dec. 18, 1971. (Not Printed)